process upon him, the courts are astute to find something more.[16] So a continuous solicitation of orders, coupled with the regular delivery of the goods ordered[17] or the adjustment within a state of claims on insurance policies made without the state,[18] constitutes sufficient basis for jurisdiction. And one Illinois decision goes so far as to hold that "by taking a risk within the state of Wisconsin, it [the insurance company] voluntarily submitted itself to the law of that state".[19]

An insurance company securing new members in another jurisdiction would appear to be engaged in more than mere solicitation in that state. While the contracts of insurance may have been completed at the home office, the policies were forwarded to, and the members resided in, the other state. Aside from the transaction of its office routine, such an organization is primarily interested in its "risks". On them depend its income and its liabilities. In the regular course of business the company must make payments and adjustments within that state, and the right of action on a policy arises there on the death of one of its members. Such a corporation would appear to be amenable to the local jurisdiction under the rule of the Supreme Court which does not require the actual making of contracts to constitute "doing business".[20]

THE EXTERRITORIAL EFFECT OF THE SEAMEN'S ACT.—In the recent case of *The Strathearn* (C. C. A. 5th Cir. 1919) 256 Fed. 631, a British seaman who had shipped at Liverpool on a British vessel and whose demand for one half of the wages so far earned by him, made after arrival in American waters, had been denied, libelled the vessel in an American port for the entire amount earned, which amount he claimed under the provisions of the Seaman's Act of 1915.[1] The British rule

---

[16]Denver & R. G. R. R. *v.* Roller (C. C. A. 1900) 100 Fed. 738.

[17]International Harvester Co. *v.* Kentucky (1914) 234 U. S. 579, 34 Sup. Ct. 944. The corporation in this case, in order to prevent itself from becoming liable to the local anti-monopoly laws, gave express instructions to all its agents not to make any contracts within the state but to forward all orders for approval outside the state. Nevertheless it was held that the continuous solicitations of orders accompanied with the delivery of machines into the state, rendered the corporation amenable to the local courts.

[18]Lumberman's Insurance Co. *v.* Meyer (1905) 197 U. S. 407, 25 Sup. Ct. 483; Mutual Life Ins. Co. *v.* Spratley, *supra,* footnote 1. An Insurance corporation continues to "do business" within a state where it has outstanding policies, and is subject to suit when one of its adjusters is served. Commercial Mutual Accident Co. *v.* Davis (1909) 213 U. S. 245, 29 Sup. Ct. 445.

[19]Firemen's Ins. Co. *v.* Thompson (1895) 155 Ill. 204, 40 N. E. 488.

[20]International Harvester Co. *v.* Kentucky, *supra,* footnote 17.

[1]38 Stat. §§1164, 1165, U. S. Comp. Stat. 1916, §322. "Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one half part of the wages which he shall have then earned, at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void . . . Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be

which barred a seaman's claim for wages until the completion of the voyage, was urged upon the court by the claimant. But the court construed the provision applying the section to "seamen on foreign vessels while in the harbors of the United States" as controlling, and permitted the libellant to recover. The case has since been appealed to the Supreme Court.

The effect of this decision is to refuse enforcement of a contract perfectly valid where consummated. However it may seem to impair the obligation of contract, it is well settled that there is nothing unconstitutional in the refusal of a court to enforce foreign made contracts where they conflict with the public policy of the forum.[2] Neither can there be any doubt that our courts have power in such a case. It is true that almost all the facts important in determining the legal relations of the parties, took place outside of American jurisdiction, but the dominant fact that the parties as well as the *res* have entered our territory, is sufficient to prevent any judgment from being a mere *brutum fulmen*.[3] In cases of disputes concerning seamen on foreign vessels, our courts always have the power to take jurisdiction although, for reasons of policy, they may in some circumstances refrain from assuming it. But once having acquired jurisdiction, the law which a court enforces is obviously its own, whether it choses to follow the rules of law of some foreign jurisdiction or the rules of its own jurisdiction. That choice is one of expediency.

Apart from statute, in most cases involving contracts of seamen on foreign vessels[4] or torts committed on such vessels on the high seas,[5] the law of the flag has been applied. But the statute in the instant case was clearly intended by Congress to give seamen on foreign vessels the same right to demand half of what they had earned during voyage, as was given to seamen of American vessels.[6] In order to benefit American sailors without putting American shipowners in a position where competition with foreign shipping interests might be impossible, it was essential that the Act be made to apply to the latter as well. The

---

entitled to full payment of wages earned . . . And provided further that this section shall apply to seamen on foreign vessels while in harbors of the United States and the courts of the United States shall be open to such seamen for its enforcement."

[2]Union Trust Co. *v.* Gross (1918) 245 U. S. 413, 38 Sup. Ct. 147; The Kensington (1902) 183 U. S. 263, 22 Sup. Ct. 102; Vandalia R. R. *v.* Kelly (Ind. 1918) 119 N. E. 257; Flagg *v.* Baldwin (1884) 38 N. J. Eq. 219.

[3]The Pawashick (D. C. 1872) Fed. Cas. No. 10851; The Lady Furness (D. C. 1897) 84 Fed. 679 (where the court took jurisdiction over the protest of a foreign consul). But where a treaty regulates the question of jurisdiction the courts will respect it. The Elwine Kreplin (C. C. 1872) Fed. Cas. No. 4426; The Rindjani (C. C. A. 1919) 254 Fed. 913; *cf.* The Amalia (D. C. 1880) 3 Fed. 652. A ship which enters our ports becomes subject to our regulations as to clearance. United States *v.* Diekelman (1875) 92 U. S. 520.

[4]The Elswick Tower (D. C. 1917) 241 Fed. 706; The Rupert City (D. C. 1914) 213 Fed. 263, 270; The Belvidere (D. C. 1898) 90 Fed. 106.

[5]Rainey *v.* New York & P. S. S. Co. (C. C. A. 1914) 216 Fed. 449; Manning *v.* International Mercantile Marine Co. (C. C. A. 1914) 212 Fed. 933.

[6]See Sen. Doc. 228, 65th Cong., pp. 23, 24; House Rep. 852, 63rd Cong., 2nd Session, pp. 19, 20.

Act abolished desertion as a prison offense.[7] But were foreign seamen unable to enforce demands for wages while in our ports, it would stand in the way of their "deserting" and seeking employment on better terms. And this was just what the Act sought to encourage so as to equalize the wage scale on American and foreign vessels.[8] The legislative history of the measure leaves little doubt as to what was intended and the provision for abrogating all inconsistent treaty provisions is persuasive evidence that Congress meant to stress the particular social policy embodied in the Act rather than observe the scrupulous etiquette of comity.[9]

The interpretation given to Section 10 is apparently contrary to the principal case.[10] This section, which was adopted by Congress to eradicate the vicious practice of "crimping",[11] makes the payment of advances to seamen a criminal offense and provides that such advances shall not be available as a defense in any civil action for wages. This provision also applies "to foreign vessels while in the waters of the United States". Where an advance was made to a British seaman on a British vessel in a domestic port, the statute applied,[12] but where the advance took place in a foreign port, the court held, four judges dissenting,[13] that it was a good defense in a libel by the sailor.[14] This holding was influenced by the incorporation of civil and criminal provisions in the same section and the court, regarding the provisions as inseparable, hesitated in construing the Statute as making acts, valid where done, criminal in the absence of the clearest intention that such was the meaning of Congress.[15] The construction in regard to the criminal provision was carried over to the civil consequences. But in the section of the Act before the court in the instant case, there is no

---

[7]38 Stat. 1166, U. S. Comp. Stat. 1916, §8380. *Cf.* Robertson *v.* Baldwin (1897) 165 U. S. 275, 17 Sup. Ct. 326, decided before the Act.

[8]House Rep. 852, 63rd Cong., 2nd Session, pp. 19, 20.

[9]38 Stat. 1184, U. S. Comp. Stat. 1916, §8382*a*.

[10]38 Stat. 1168, 1169, U. S. Comp. Stat. 1916, §8323.

[11]"Crimping" is the practice whereby advances are made to shipping or boarding masters for procuring positions for sailors and for sundry service. It has been used to exploit mariners.

[12]Patterson *v.* Bark Eudora (1903) 190 U. S. 169, 23 Sup. Ct. 821. It should be noted that this action was brought under a previous statute, 30 Stat. 738, 763, U. S. Comp. Stat. 1916, §8323. The section under consideration, however, was practically identical with that in the later statute. *Supra,* footnote 10. The main divergence lies in subsection *f* of the earlier: "That this section shall apply as well to foreign vessels as to vessels of the United States." Subsection *e* of the later statute inserts "while in the waters of the United States" after "foreign vessels".

[13]McKenna, *J.*, at p. 204: "We cannot concede the qualification nor doubt the power of Congress to impose conditions upon foreign vessels entering or remaining in the harbors of the United States."

[14]Sandberg *v.* McDonald (1918) 248 U. S. 185, 39 Sup. Ct. 84. Nor does this section apply to advances made on an American vessel in a foreign port. The Rhine & The Windrush (1918) 248 U. S. 205, 39 Sup. Ct. 89.

[15]Where a criminal provision is intimately bound up with a civil provision, courts will not give effect to the statute with respect to foreign transactions. American Banana Co. *v.* United Fruit Co. (1909) 213 U. S. 347, 29 Sup. Ct. 511 (*semble*).

mention of any criminal liability, leaving a loophole for a distinction. A construction of the section to the effect that it shall apply only to such part of the wages as is earned by seamen on foreign vessels while in American waters seems strained and tortured. In reaching this result the principal case does not stand alone,[16] and the decision seems to effectuate the objects for which the statute was enacted.

LIABILITY OF A NOTARY PUBLIC ON HIS CERTIFICATE THAT A PERSON IS KNOWN TO HIM.—The legislature of one of our states has made it a misdemeanor for a notary public to take an acknowledgment of a written instrument when the parties have not appeared before him personally.[1] But in that very jurisdiction we find the court of last resort saying in astonishment, "And yet we were recently advised on the argument of a cause that reputable notaries are accustomed to take acknowledgments over the telephone."[2] It is not at all surprising, therefore, to find that in numerous instances notaries and their sureties have incurred liability because of similar careless practices in certifying that the persons acknowledging written instruments were in fact known to them to be the ones whose signatures were on the documents. A recent example is seen in the case of *Anderson* v. *Arohnson* (Cal. 1919) 184 Pac. 12. The defendant, a notary public, certified that the individual acknowledging a deed of trust was personally known to him to be the one whose signature appeared upon the instrument. As a matter of fact the signature was a forgery and the individual, an impostor. The notary acted on the strength of a short speaking acquaintance with the impostor, who had been introduced to him as part of a fraudulent scheme. The notary and his sureties were held liable to the plaintiff who advanced money on the security of the deed, the ground for decision being that the notary, under the circumstances, had been negligent in taking the acknowledgment.

It is well settled by the great weight of authority in this country that the acknowledgment of a written instrument is a ministerial function,[3] although a number of jurisdictions hold that the act is judicial

---

[16]The Sutherland (D. C. 1919) 260 Fed. 247. *Cf.* The Hannington Court (D. C. 1918) 252 Fed. 211, where it appears the seamen deserted for reasons other than any refusal to pay half wages. In Sandberg *v.* McDonald, *supra*, footnote 14, the Supreme Court lent some sort of approval to the doctrine of the principal case. The libellant originally claimed half wages and the question arose as to whether advances made abroad could be deducted by the owners. The court held that they might and that therefore the libellant had recovered half of what was already earned by him. But had the court cared to declare that a seaman on a foreign vessel had no right to demand half wages while in an American port, the court could have stopped then and there and need not have considered the validity of the advances.

[1]Minn. Rev. Laws, 1905, §2661.

[2]Barnard *v.* Schuler (1907) 100 Minn. 289, 290, 110 N. W. 966.

[3]Penn. *v.* Garvin (1892) 56 Ark. 511, 20 S. W. 410 (*semble*); People *v.* Bartels (1891) 138 Ill. 322, 27 N. E. 1091; Learned *v.* Riley (1867) 96 Mass. 109; Read *v.* Toledo Loan Co. (1903) 68 Oh. St. 280, 67 N. E. 729.